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Letter dated 5 October 2016 from the President of the International Residual Mechanism for Criminal Tribunals addressed to the President of the Security Council

I have the honour to write to you with regard to a matter involving the effective and efficient implementation of Security Council resolution 1966 (2010), which was adopted under Chapter VII of the Charter of the United Nations and by means of which the International Residual Mechanism for Criminal Tribunals was established and its statute adopted.

Aydin Sefa Akay, a former judge of the International Criminal Tribunal for Rwanda, having been nominated by the Government of Turkey, was elected by the General Assembly as a judge of the Mechanism for a four-year term of office beginning on 1 July 2012. Thereafter, and in the light of resolution 2269 (2016), the Secretary-General, following consultation with the President of the Security Council and the President of the General Assembly, appointed Mr. Akay for a new two-year term of office beginning on 1 July 2016.

On 25 July 2016, I assigned Mr. Akay as a member of the appeals bench in Case No. MICT-12-29-R, *The Prosecutor v. Augustin Ngirabatware*, the proceedings of which are ongoing.

On or about 21 September 2016, to the best of my understanding and belief, Mr. Akay was detained by law enforcement officials of the Government of Turkey in relation to allegations of conduct connected to the acts of 15 July 2016 directed against the constitutional order of Turkey. Following his arrest, Mr. Akay identified himself to the Turkish authorities as a judge of the Mechanism. The Secretariat, at senior levels, has also advised senior representatives of the Government of Turkey of Mr. Akay's status and functions as a judge of the Mechanism. These repeated efforts notwithstanding, Mr. Akay remains in detention and unable to perform his functions as a judge of the Mechanism.

Mr. Akay's arrest and ongoing detention have impeded, and continue to restrict, the effective and efficient implementation of the business of the Mechanism. First, as a result of his arrest and ongoing detention, Mr. Akay was unable to attend the first in-person plenary meeting of judges of the Mechanism convened at its branch in The Hague on 26 and 27 September 2016. Discussion of the important matters deliberated on that occasion, including amendments to the Rules of Procedure and Evidence of the Mechanism, was therefore deprived of the

benefit of Mr. Akay's views and contributions stemming from his long experience as an international judge.

Second, the appeals bench convened in *The Prosecutor v. Augustin Ngirabatware* is unable to proceed with completion of its judicial work, even as it is seized with active filings by the parties and has before it pending judicial decisions under current deliberation. Conscious of the instruction by the Security Council that the Mechanism operate in a lean, timely and cost-effective fashion, as expressed most recently in its resolution 2256 (2015), as well as of the potential impacts on the interests of justice, including judicial independence in international courts and tribunals, I am especially concerned as to the ongoing deleterious effect of Mr. Akay's situation on the discharge of core judicial functions of the Mechanism.

In view of the serious continuing effects of the present situation, and without prejudice to the determination of immunity in the case under the Statute of the Mechanism and the Convention on the Privileges and Immunities of the United Nations, I am compelled to draw the attention of the Security Council to the present matter and request its prompt consideration, so as to enable the Mechanism to continue and complete its work in the above proceedings through the speedy release of Mr. Akay from detention.

I should be grateful if you would have the present letter circulated as a document of the Security Council.

(*Signed*) Theodor **Meron**
President
International Residual Mechanism for Criminal Tribunals